

MONTANA LEGISLATIVE HISTORY

Chapter 444 19 95

Bill H _____ S 189

Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Mar 02 ☒ C

Mar 13 ☒ C

_____ C

_____ C

Date Out Mar 13 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 02 ☒ C

Feb 13 ☒ C

_____ C

_____ C

Feb 13 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED AS AMENDED FAILED	47	52
3/27	MOTION FAILED TO RECONSIDER PREVIOUS ACTION ON THIS BILL	46	53

SB 188 INTRODUCED BY BARTLETT, ET AL.

SUBMIT TO QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VI OF THE MONTANA CONSTITUTION TO REQUIRE PERIODIC REVIEW OF STRUCTURE AND FUNCTIONS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT, TO BE FUNDED AT LEAST IN PART BY PUBLIC FUNDS

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO STATE ADMINISTRATION		
1/24	HEARING		
1/25	TABLED IN COMMITTEE		
2/13	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	20	30
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 189 INTRODUCED BY WELDON, ET AL.

REQUIRE NOTICE AT TIME OF SEIZURE OF A DRIVER'S LICENSE BY A PEACE OFFICER OF A RIGHT TO A HEARING UPON SUSPENSION OR REVOCATION OF THE LICENSE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO JUDICIARY		
2/02	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	50	0
2/15	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/02	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	76	18
3/28	3RD READING CONCURRED	86	12
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	45	0
4/03	3RD READING AMENDMENTS CONCURRED	45	0
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 444		
	EFFECTIVE DATE: 04/14/95—SECTIONS 1(7), 3 & 4		
	EFFECTIVE DATE: 10/01/95—SECTIONS 1(1-6 & 8) & 2		

SB 190 INTRODUCED BY KLAMPE

PROVIDE LEGISLATORS \$100 A MONTH FOR EACH MONTH WHEN THE LEGISLATURE IS NOT IN SESSION FOR REIMBURSEMENT OF EXPENSES INCURRED BY LEGISLATORS DURING THE INTERIM

1/18	INTRODUCED
1/18	FIRST READING

SENATE BILL NO. 189

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTICE AT THE TIME OF SEIZURE OF A DRIVER'S LICENSE BY A PEACE OFFICER OF A RIGHT TO A HEARING UPON SUSPENSION OR REVOCATION OF THE LICENSE; EXTENDING THE EFFECTIVE PERIOD FOR A TEMPORARY DRIVING PERMIT FROM 72 HOURS TO 5 DAYS; AUTHORIZING A DISTRICT COURT TO STAY SUSPENSION OR REVOCATION ACTION PENDING THE HEARING; AUTHORIZING THE DEPARTMENT OF JUSTICE TO SUSPEND OR REVOKE A DRIVER'S LICENSE THAT IS SEIZED BY A TRIBAL PEACE OFFICER; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood, breath, or urine tests. (1) ~~Any~~ A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of a peace officer ~~having~~ who has reasonable grounds to believe that the person ~~to have~~ has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests are administered. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

(2) ~~Any~~ A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this section.~~

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests

1 designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer
2 shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall
3 immediately forward the license to the department, along with a sworn report noting that the peace officer
4 had reasonable grounds to believe that the arrested person had been driving or was in actual physical
5 control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs,
6 or a combination of the two, and noting that the person ~~had~~ refused to submit to the test or tests upon the
7 request of the peace officer. Upon receipt of the report, the department shall suspend the license for the
8 period provided in subsection (5).

9 (4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department,
10 a temporary driving permit, which is valid for ~~72 hours after the time of~~ 5 days following the date of
11 issuance and shall provide the driver with written notice of the license suspension or revocation and the
12 right to a hearing provided in 61-8-403.

13 (5) The following suspension and revocation periods are applicable upon refusal to submit to a test
14 or tests:

15 (a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary
16 license;

17 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from
18 the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

19 (6) A nonresident driver's license seized under this section must be sent by the department to the
20 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to
21 a test or tests.

22 (7) A driver's license seized within the exterior boundaries of a federally recognized Indian
23 reservation in this state by a peace officer acting under the authority of a tribal government with jurisdiction
24 over the reservation may be received and acted upon by the department if:

25 (a) the tribal government has adopted an ordinance substantially similar to the provisions of this
26 section; and

27 (b) the department and the tribal government have entered into a state-tribal cooperative agreement
28 pursuant to Title 18, chapter 11, part 1.

29 ~~(7)~~ (8) All suspensions are subject to review as provided in this part."
30

Section 2. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. (1) ~~The department shall immediately notify in writing any person whose license or privilege to drive has been suspended or revoked, and the person may file a petition within~~ Within 30 days after notice ~~for of the right to a hearing on the matter has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county in which~~ where the person resides or ~~in the district court in the county in which this where the arrest was made.~~

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county ~~in which~~ where the appeal is filed and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court, ~~and the~~. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two; ~~whether~~

(ii) the person was placed under arrest; ~~and whether~~

(iii) the person refused to submit to the test or tests.

(b) The court shall determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation."

NEW SECTION. Section 3. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

NEW SECTION. Section 4. Effective dates. (1) [Section 1(7), section 3, and this section] are

1 effective on passage and approval.

2 (2) [Section 1(1) through (6) and (8) and section 2] are effective October 1, 1995.

3 -END-

rejecting as proposed. He feared loss of intent.

EXECUTIVE ACTION ON SB 149

Motion: SENATOR REINY JABS MOVED TO TAKE SB 149 OFF THE TABLE.

Discussion: CHAIRMAN CRIPPEN explained that this bill is a Constitutional Amendment to remove two words, "this full".

SENATOR MIKE HALLIGAN said he believed that the Supreme Court had reversed itself and then followed its own precedent in reversing itself in interpreting the full legal redress in cases. Then they saw they had made an error and went 180 degrees and said they were wrong, he stated. Now he said the interpretation is not being interpreted liberally or being misconstrued. So the bill taking away people's full legal redress when not being abused was not responsible, he said.

SENATOR BISHOP agreed with the senator. He said the courts were loath to reverse themselves. He thought it would cause undue confusions.

Vote: By roll call vote, the MOTION TO TAKE SB 149 FROM THE TABLE PASSED by a 6 to 5 margin.

{Tape: 1; Side: B; Approx. Counter: 0.0}

HEARING ON SB 189

Opening Statement by Sponsor:

SENATOR JEFF WELDON, Senate District 35, Arlee, sponsor for SB 189, brought this bill to the committee on behalf of the Department of Justice. The primary purpose would be to give the department exclusive authority to suspend or revoke the drivers' license of a tribal member seized within the boundaries of an Indian reservation by tribal authorities following a testing refusal under authority of a tribal implied consent ordinance or law. It would also amend the process by which a motorist who refuses testing under the implied consent laws are given notice of their right to a hearing to contest a license suspension or revocation if the petition is filed in district court to challenge the license seizure and suspension or revocation. On the first part of the bill, he explained, the department began working with the tribes within Montana last fall. Over the past few weeks, the Salish-Kootenai Tribe had raised concerns about the language. The legal staff of the tribe had agreed with the concept of the bill, however, they had the concerns about the language. The Department of Justice has been working with the tribes and they are all optimistic that they can agree and collectively propose amendments to the bill. He asked the Chairman to delay action on the bill until they could complete

negotiations with the tribe and arrive at mutually agreeable language. He thanked the chairman for his patience.

Proponents' Testimony:

Attorney General Joseph Mazurek appeared to honor a commitment made to the Salish/Kootenai tribe on the previous day. He said that they had agreed that the committee take no action on the bill until they had an opportunity to meet with members of the tribe and other tribes. No one has a disagreement in principle, he said, but the language was in question. He presented a letter from the tribe. (EXHIBIT 1).

Brenda Nordland, Department of Justice, addressed the primary purpose of the bill which she described as a gap in Montana's implied consent law as it applies to seizures occurring on the Indian reservations under tribal law. The secondary purpose, she said, changes the procedure notice requirements and codifies the practice currently used throughout the state regarding challenges to the implied consent. She presented written testimony and read from the text. (EXHIBIT 2).

A letter, addressed to Brenda Nordlund, Department of Justice, from Llevando Fisher, President, Northern Cheyenne Tribal Council, was presented after the hearing. (EXHIBIT 3).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked about the non-Indians on the reservation and Brenda Nordland said the bill did not address non-Indians. They are covered under existing law. This bill deals with tribal to tribal arrests and seizures.

SENATOR JABS asked what the procedure would be at present for a non-Indian picked up on the reservation?

Ms. Nordland said she did not know and thought it was through cross-deputization between various tribes.

Attorney General Mazurek answered that the Montana Highway Patrol did not have the authority over Indian members on the reservation unless they have a state-tribal agreement. The Flathead Reservation allows a memo of understanding for specific authority to be given by the appropriate law enforcement department, as some other do. The tribal police do not have the authority to pick up a non-Indian for DUI, he said, but if they stop someone, then they call the proper authority and proceed.

SENATOR JABS inquired if the bill was tight enough so that it would not be worded to eventually cause a non-Indian to go through the tribal courts.

Attorney General Mazurek stated it was not contemplated. Even under the agreement on the Flathead reservation, there is no authority even where there is shared responsibility to issue citations. If a citation is issued to a non-Indian, it goes to state or justice of the peace court.

SENATOR JABS was worried about "the camel's nose under the tent," in that future agreements would include non-Indian jurisdiction.

The Attorney General assured him it would not.

SENATOR RIC HOLDEN asked about Page 2, Part B. He thought that if they enter into this agreement and then pass SENATOR HALLIGAN'S bill about drivers' licenses, it would seem to give Indian police officers a right to take non-Indian licenses.

Attorney General Mazurek said that nothing the legislature does can affect the jurisdiction of the tribal courts. That is a matter of federal law. This bill would only allow an agreement with the tribal government that the state would honor a tribal suspension. There are over 500 tribal-state agreements in the state, he said. They could not alter the jurisdiction of tribal courts over non-Indians.

SENATOR LINDA NELSON asked if it was to apply to all tribes, or would they have to negotiate with each one separately?

The Attorney General said that each would be done separately. They are separate, independent sovereigns, he said.

SENATOR GROSFIELD asked if in a practical situation where an tribal officer stops a DUI who is a non-Indian on a reservation, was there a time for detention until the appropriate authority could be summoned.

The Attorney General said that it depends on the reservation. He gave an example of the Flathead agreement wherein a Montana Highway Patrolman could stop and detain a violator until the appropriate tribal representative could be called. In answer to a subsequent question, he said that tribal police have like authority.

Closing by Sponsor:

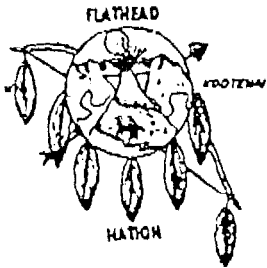
SENATOR WELDON said that the Department of Justice would be happy to show the committee a similar agreement between the state and the tribes and that these agreements actually contain a negative declaration that the agreement affects jurisdiction. They would only affect the procedure by which the state recognizes a tribal government suspension of a state license. They assured the chairman that they would work as quickly as possible for a resolution.

EXHIBIT NO. 1DATE 2-2-9558 189

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

February 1, 1995



aph E. Dupuis - Executive Secretary
n L. Clakmont - Executive Treasurer
nice Hewankom - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:

Michael T. "Mickey" Pablo - Chairman
Rhonda R. Swaney - Vice Chairwoman
Carole McGraw - Secretary
Lloyd Irvine - Treasurer
Louis Adams
Elmer "Sonny" Marigaan, Jr.
Henry "Hank" Baylor
D. Fred Matt
Donald "Donny" Dupuis
Mary Lethland

Ms. Beth Baker
Office of the Attorney General
Department of Justice
215 North Sanders, Justice Bldg.
Helena, Montana 59620-1401

Re: Senate Bill 189

Dear Ms. Baker:

This letter is written to confirm the understanding reached between our Legal Department and the Office of the Attorney General on the afternoon of February 1, 1995.

As you are aware, the Confederated Salish and Kootenai Tribes have reviewed Senate Bill 189. The concept of enabling state agencies to accept license revocation, suspension, and reinstatement proceedings conducted by Tribal peace officers and Tribal Courts is admirable. The State has, until recently, routinely done that on the Flathead Indian Reservation. For that reason, among others, we believe that the concept is already in place. The state now appears to believe otherwise.

Both governments, I believe, genuinely desire to reinstate a previously functioning system of state law. We believe that the present amendments, however, are more than is necessary to do the job. We believe that more acceptable terms can be met.

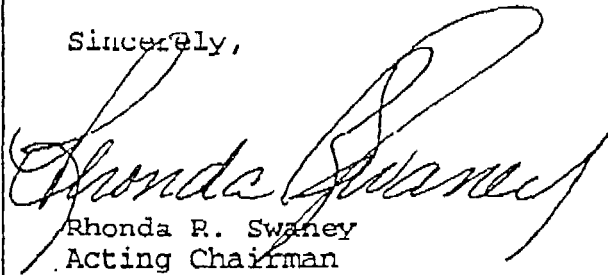
In line with our mutual goal to achieve a workable system, we accept your proposal to advise the Committee of the fact that the Confederated Salish and Kootenai Tribes have substantial concerns with the present language, that the hearing proceed with that information being made of record by you, and that your office request that no further Committee action take place until we have had an opportunity to attempt a compromise.

Ms. Beth Baker
Page 2
February 1, 1995

We have also spoken to Senator Weldon, the bill's sponsor. He is agreeable to this approach.

We look forward to working with you on this matter. Please contact our Legal Department at your earliest convenience to commence this process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rhonda R. Swaney".

Rhonda R. Swaney
Acting Chairman

cc: Senator Weldon

SB 189

Testimony of the Department of Justice
February 2, 1995
Prepared by Brenda Nordlund

I will address both aspects of this bill.

STATE-TRIBAL ENFORCEMENT OF IMPLIED CONSENT LAWS

It has been the Montana Department of Justice's policy to process licenses of tribal members seized by tribal law enforcement officials under tribal implied consent ordinances and forwarded to the Department as if those licenses had been seized under Mont. Code Ann. § 61-8-402. That section generally provides that, if a driver reasonably believed to be operating a motor vehicle under the influence of alcohol or drugs refuses to consent to administration of a blood, breath or urine test, a law enforcement officer must seize the driver's license and send it to the Department. The driver's privilege to operate a motor vehicle is suspended automatically for 90 days after a first refusal or, following a second or subsequent refusal within five years of a previous refusal, for one year. When the suspension is completed, the driver may request reinstatement of his license upon payment of a \$100 fee.

Last summer the Department was required to reassess its policy in response to a demand by a tribal member for return of his license without payment of the fee. We concluded that licenses seized under the authority of tribal ordinances cannot be deemed to have been seized under § 61-8-402 as that provision is now drafted. We also concluded, however, that this issue could be addressed through an amendment to § 61-8-402 and entry

into state-tribal cooperative agreements under Mont. Code An.. §§ 18-11-101 to 61-8-402. We communicated our conclusions to each of the chairs of the Indian tribes in a letter dated September 7, 1994.

It is only in recent days that the Department was advised of concerns of the Confederated Salish-Kootenai Tribes of the Flathead Nation (C S-K T) regarding the manner in which this bill was drafted. We have exchanged possible amendments with the Legal Department of the C S-K T in an attempt to address their concerns. The Department is willing to continue to work with the C S-K T, and to that end, late yesterday afternoon an agreement was reached with the C S-K T that the hearing today proceed, but that we would ask that no further Committee action be taken until we have had an opportunity to reach a compromise.

This agreement is memorialized in a letter from Rhonda R. Swaney, acting Chairman and Vice Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation, a copy of which will be distributed to committee members by the committee secretary.

The Department wants to work things out with the C S-K T, but in so doing, we don't want to create problems with other tribes. The state-tribal government aspects of this bill must be broad enough to work for all parties, and the DOJ is committed to do whatever to resolve concerns and come up with appropriate amendments that serve the needs of all. And the Department wants to assure the Chairman and members of this committee, that it

EXHIBIT 2
DATE 2-2-95
SB 189

will act with dispatch so as not to hold up the committee action unduly.

PROCEDURAL CHANGES REGARDING NOTICE AND RIGHT TO STAY

Unrelated to the tribal issue, the bill also contains some revisions for the notice to be given drivers under the implied consent statute. These changes are intended to provide drivers with more timely and clearer notice of their rights under the implied consent statute, particularly the right to a hearing. The bill also codifies the current practice of staying a license suspension or revocation pending hearing. These changes were brought in part in response to a lawsuit filed in 1992 in federal district court that asserted a procedural due process challenge to Montana's implied consent laws. The lawsuit is currently in the process of being dismissed, without a decision on the merits or any admission of constitutional deficiency on the part of the state. Rather than run the risk of a similar challenge in the future, the Department opted to support these procedural changes, which will serve the purpose of providing timely notice of rights to motorists whose license is subject to seizure, suspension or revocation under implied consent laws, while at the same time streamlining the process by having the formal notice served by the arresting officer at the time of arrest, rather than by mail several days later from the Motor Vehicle Division.

SB189



• WOHEHIV •
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



• WOHEHIV •
The Morning Star

RECEIVED

FEB 09 1995

ATTORNEY GENERALS OFFICE
HELENA MONTANA

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3DATE 2-2-95FILE NO. SB 189

February 2, 1995

Ms. Brenda Nordlund
Mt. Dept. of Justice
215 N. Sanders
Box 201401
Helena, Mt. 59620-1401

Dear Brenda and Sara:

The office of Montana Attorney General has inquired on our views about a bill which is now pending before the Montana legislature relating to driver's license suspension, revocation and reinstatements. We have read the proposed changes, especially the new language in which the State will recognize and honor the suspension and revocation that our Judicial System would impose on a driver who refused to take blood, breath or urine tests that would be requested to detect alcohol or drugs in an impaired drivers body.

We support the bill (Senate Bill No. 189) and the amendments through February 2, 1995. Our understanding of this bill is that if our Tribe ever requires the drivers here to have a license and we enact law which would allow our police and judicial system to suspend and revoke an impaired drivers license to drive, then you, in the State, would recognize our decision and see that the license was indeed revoked. Reinstatements made by the Tribe likewise would be respected by Montana. The Tribe and the State would also need a short written memorandum of agreement in place once this enabling State legislation is passed.

We believe this is a step towards the State and Tribal Governments working cooperatively on our joint problems and do support this proposed SB189 as now amended.

Sincerely,

Llevando Fisher, President
Northern Cheyenne Tribal Council

cc: Calvin L. Wilson
Tribal Council Member

Amendments to Senate Bill No. 189
First Reading Copy

For the Committee on Judiciary

Prepared by Brenda Nordlund, Dept. of Justice
February 1, 1994

1. Page 2, lines 22-28

Strike: subsection (7) in its entirety

Insert: (7) The department will (a) suspend or revoke a driver's license seized within the exterior boundaries of a federally recognized Indian reservation in this state by a peace officer acting under the authority of a tribal government with jurisdiction over the reservation and (b) recognize a tribal court order reinstating a driver's license if:

(i) the tribal government has adopted an ordinance substantially similar to this section and 61-5-403; and

(ii) the department and tribal government have entered into a state-tribal cooperative agreement for this purpose in accordance with title 18, chapter 11, part 1.

2. Page 3, line 25:

Insert: "This section does not create a right of appeal to a state court from a driver's license seizure by a peace officer acting under authority of a tribal government or adjudicated by a tribal court pursuant to a cooperative agreement under subsection (7) of [Section one].

DATE 2-2-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 8:30 EXEC. SESS: SB 13, 132, 167, 200

HEARING 10AM: HB 37, HB 108, SB 189, SB 272

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bill Gramerhaus	RM TD - Dept of Home	HB 37	✓	
Dean Roberts	Motor Veh. Division	SB 189	✓	
Brenda Nordlund	Dept of Justice	SB 189	✓	
Sarah Bond	11	11	✓	
Darryl B RUNO	PCHS / AID / ID	HB 108	X	
KATHY McGowan	CD PM	108	✓	
	Generals			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By BRUCE D. CRIPPEN, CHAIRMAN, on February 13, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 318, SB 353, SJR 12
Executive Action: SB 189, SB 206, SB 266, SB 249, SB 276,
SB 241, SB 233, SB 353, SJR 12

EXECUTIVE ACTION ON SB 189

Motion: SENATOR MIKE HALLIGAN MOVED AMENDMENTS sb018906.av1 AS CONTAINED IN (EXHIBIT 1).

Discussion: Brenda Nordlund, Department of Justice, explained the amendments, saying that they softened the language in the original bill to delete express reference to substantially similar requirements for the implied consent laws in the tribal codes. This would also explicitly remove a reference to state tribal cooperative agreements. The Department intends to have

state cooperative tribal agreements before they enforce tribal codes involving drivers' license suspensions and revocations under a tribal implied ordinance, but it is not necessary that it be in the text of the bill.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR HALLIGAN MOVED THAT SB 189 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 206

Motion: SENATOR HALLIGAN MOVED THAT SB 206 BE TABLED.

Discussion: SENATOR HALLIGAN said that other bills were going through the process that would address the concerns in this bill. He said he had a major problem with the bill because of the "beyond a reasonable doubt," and "requirement of criminal charges," which would require too much work to fix. He hoped the sponsor could be satisfied with the other bills.

CHAIRMAN BRUCE CRIPPEN expressed concern about the motion.

Valencia Lane said she had prepared some amendments from SENATOR BURNETT, but they were not substantial.

Vote: THE MOTION PASSED on a roll call vote. Six members aye and 4 members voted no.

EXECUTIVE ACTION ON SB 266

Discussion: CHAIRMAN CRIPPEN said he had spoken to SENATOR RIC HOLDEN about his concern. The chairman said the bill was prepared on a biennium basis, to which the amendments refer.

Motion/Vote: CHAIRMAN CRIPPEN MOVED THE AMENDMENTS AS CONTAINED IN (EXHIBIT 2). The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: CHAIRMAN CRIPPEN MOVED THAT SB 266 DO PASS AS AMENDED. The MOTION CARRIED on a roll call vote with six members voting aye and four members voting no.

EXECUTIVE ACTION ON SB 266

Discussion: SENATOR HALLIGAN explained an amendment that would allow the bill to reflect a termination date of January 1, 2001 for the Office of the Clerk.

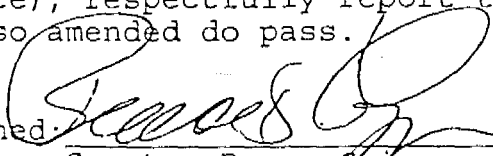
Motion: SENATOR HALLIGAN MOVED THE AMENDMENT. The MOTION CARRIED on an oral vote, with SENATOR SHARON ESTRADA voting, "no."

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 189 (first reading copy -- white), respectfully report that SB 189 be amended as follows and as so amended do pass.

Signed 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 10.

Following: "LICENSE"

Insert: "OF A TRIBAL MEMBER"

Following: "SEIZED"

Insert: "UNDER AUTHORITY OF A TRIBAL GOVERNMENT OR"

Following: ";

Insert: "AUTHORIZING THE DEPARTMENT TO RECOGNIZE A TRIBAL COURT ORDER SUSPENDING, REVOKING, OR REINSTATING THE DRIVER'S LICENSE OF A TRIBAL MEMBER PURSUANT TO TRIBAL LAW OR REGULATION REQUIRING ALCOHOL OR DRUG TESTING OF MOTOR VEHICLE OPERATORS;"

2. Page 2, lines 22 through 28.

Strike: subsection (7) in its entirety

Insert: "(7) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state."

-END-


Amd. Coord.
Sec. of Senate

371454SC.SPV

Amendments to Senate Bill No. 189
First Reading Copy

(Requested by Justice Dept.)
For the Committee on Judiciary

Prepared by Valencia Lane
(originally prepared by Brenda Nordlund)
February 7, 1995

1. Title, line 10.

Following: "LICENSE"

Insert: "OF A TRIBAL MEMBER"

Following: "SEIZED"

Insert: "UNDER AUTHORITY OF A TRIBAL GOVERNMENT OR"

Following: ";

Insert: "AUTHORIZING THE DEPARTMENT TO RECOGNIZE A TRIBAL COURT
ORDER SUSPENDING, REVOKING, OR REINSTATING THE DRIVER'S
LICENSE OF A TRIBAL MEMBER PURSUANT TO TRIBAL LAW OR
REGULATION REQUIRING ALCOHOL OR DRUG TESTING OF MOTOR
VEHICLE OPERATORS;"

2. Page 2, lines 22 through 28.

Strike: subsection (7) in its entirety

Insert: "(7) The department may recognize the seizure of a
license of a tribal member by a peace officer acting under
the authority of a tribal government or an order issued by a
tribal court suspending, revoking, or reinstating a license
or adjudicating a license seizure if the actions are
conducted pursuant to tribal law or regulation requiring
alcohol or drug testing of motor vehicle operators and the
conduct giving rise to the actions occurred within the
exterior boundaries of a federally recognized Indian
reservation in this state."

{Tape: 1; Side: A}

HEARING ON SB 189

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, brought SB 189 before the committee on behalf of the Department of Justice. In title 61, chapter 8 dealing with motor vehicles and driving under the influence of alcohol and drugs, he said the bill would amend sections 402 and 403. The bill would change the manner in which drivers would be informed of a suspension/revocation under the implied consent law and their right to a court hearing to contest the licensure action. The current practice involves mailing the driver a notice after the revocation or suspension. The bill would require notice at the time of the seizure. The bill would also codify the current practice of allowing a court to issue staying a license suspension or revocation pending a hearing to determine if the testing request was lawful. It would also give the Department of Justice explicit authority to recognize the seizure or suspension of a tribal member's drivers license by a tribal officer pursuant to tribal law. He said that any discomfort the tribal entities had had with the bill had been resolved through amendments which had been adopted in the Senate.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, provided the committee with history on why they were asking to amend the implied consent laws to deal specifically with comparable tribal law provisions. She said the bill would give the department the authority they need when a tribe decides they want to use the suspension of a drivers license as a tool to enforce drunk driving or impaired driving laws on the reservation, they can send a testing refusal which the department can act upon.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. WELDON closed by asking for a favorable action on the bill.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/2/95

BILL NO. SB189

SPONSOR(S) Sen. Wilder

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Brenda Nordlund	Dept of Justice	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

bring them both into the court to allow the jury to make the determination.

REP. MC GEE asked if she read the bill to allow a defendant in a case to testify that they had had a conversation which would have given information resulting in shared liability.

REP. KOTTEL said the fear of the opponents was that it would produce an empty chair in the courtroom and the disclosure of the conversation would result in the jury ascribing more blame on the person represented by the empty chair (absent from the courtroom) than the present defendant. Her opinion was that the bill would allow the attorney to let the jury hear about the other defendant and it would allow the plaintiff to defend the other person. She said that would put an additional burden on the plaintiff, but the plaintiff settled out of court with that other defendant who was not in the courtroom.

REP. HURDLE objected to the concept that someone could pass up their responsibility for public safety through a casual conversation with a third party.

Vote: The motion carried to concur in SB 212, 16 - 2, REPS. HURDLE and WYATT voted no.

EXECUTIVE ACTION ON SB 189

Motion: REP. MC CULLOCH MOVED SB 189 BE CONCURRED IN.

Motion/Vote: REP. SOFT MOVED TO AMEND PAGE 3, LINE 9 AS PROPOSED BY THE SPONSOR. The motion carried unanimously by voice vote.

Motion/Vote: REP. MC CULLOCH MOVED TO AMEND PAGE 4, LINE 6 AS PROPOSED BY THE SPONSOR. The motion carried 17 - 1, REP. BOHARSKI voted no.

Motion: REP. AHNER MOVED SB 189 BE CONCURRED IN AS AMENDED.

Discussion: REP. BOHARSKI asked for an explanation and the compelling reason for the Senate's amendments on lines 11 through 14.

REP. HURDLE explained that it would allow the Department of Justice the authority to act on a tribal agreement. CHAIRMAN CLARK said that was essentially correct and that there were no opponents to the bill. REP. SOFT read his notes based on testimony from the department.

REP. BOHARSKI and CHAIRMAN CLARK discussed the ramifications of the bill which had been detailed in the hearing.

Vote: The motion carried 16 - 1, REP. BOHARSKI voted no.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/13/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 11:35	✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 189 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Hurdle

And, that such amendments read:

1. Page 3, line 9.

Following: "STATE."

Insert: "Action by the department under this subsection is not reviewable under 61-8-403."

2. Page 4, line 6.

Insert: "(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators."

-END-

Committee Vote:

Yes 16, No 1.

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